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NAFTA & The Environmental Side Agreement: Fusing Economic Development with Ecological Responsibility

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Comments

NAFTA & The Environmental Side Agreement: Fusing Economic Development with Ecological Responsibility*

Despite a well-publicized and hotly contested debate between the Clinton administration and an environmental coalition, the substance of the North American Free Trade Agreement and its Environmental Side Agreement remains a mystery to most Americans. Both sides offered impressive statistics, but considerably few facts. This article presents a substantive analysis of the agreement, the environmental questions surrounding the agreement, and its capacity to provide both economic and ecological enrichment.

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I. INTRODUCTION

The United States, Canada, and Mexico are in the process of forging a relationship unparalleled anywhere else in the world. The North American Free Trade Agreement (NAFTA),[1] which became effective on January 1, 1994, has been courted by many as the next savior of a depressed U.S. economy. By establishing a six trillion dollar market, the United States has become a member of the largest free market in the world.[2]

NAFTA is not, however, without its critics. One of the strongest attacks has come from environmentalists who predict that such a significant increase in trade will have disastrous environmental ramifications.[3] This Comment will illustrate why this prediction is inaccurate and how NAFTA will do more to cleanse rather than foul the U.S.-Mexican environment. In order to effectively present this hypothesis, this Comment will first analyze the environmental criticisms of NAFTA. Second, this Comment will examine the environmental provisions of both NAFTA and the Environmental Side Agreement, giving specific attention to the enforcement mechanisms of the Environmental Side Agreement. Third, this Comment will analyze the effectiveness of NAFTA and the Environmental Side Agreement in protecting the environment. Finally, this Comment will illustrate how Mexico's capacity and desire to fulfill its own environmental obligations, coupled with the necessary financing, will allow our neighbor to the South to independently put an end to decades of ecological abuse.

II. THE ENVIRONMENTAL CHALLENGES TO NAFTA

Although NAFTA successfully cleared the hurdle of U.S. congressional approval, Public Citizen, Friends of the Earth, the Sierra Club, and hundreds of local action groups waged a bitter war against the trade agreement.[4] The fight became so intense that on

1. North American Free Trade Agreement, Dec. 17, 1992, U.S.-Can.-Mex., 32 I.L.M. 289 & 32 I.L.M. 606.

2. GRAY NEWMAN & ANNA SZTERENFELD, BUSINESS INTERNATIONAL'S GUIDE TO DOING BUSINESS IN MEXICO 24 (1993).

3. Michael S. Feeley & Elizabeth Knier, *Environmental Considerations of the Emerging United States-Mexico Free Trade Agreement*, 2 DUKE J. COMP. & INT'L L. 259, 268 (1992).

4. Peter Behr, *For Environmental Groups, Biggest NAFTA Fight Is Intramural*, WASH. POST, Sept. 16, 1993, at D10.

January 7, 1992, the three groups mentioned, in effect forming an environmental coalition, brought an action against the U.S. Trade Representative for failure to file an environmental impact statement as allegedly required by the National Environmental Policy Act (NEPA).[5] The lawsuit was a bold maneuver, designed to delay NAFTA past its effective date and into oblivion.[6] However, despite a favorable initial ruling by District Court Judge Charles Richey, a federal appellate court settled the issue by ruling that NAFTA was not subject to the NEPA requirement.[7]

With the dust since settled, and the environmental coalition's battle to defeat NAFTA lost, the question worth bearing in mind is whether NAFTA will be the environmental pariah opponents claimed it would be. To answer this question, one must first understand the arguments proposed by NAFTA opponents. In general, the agreement is characterized as having two fundamental flaws. First, NAFTA, following well-established precedent in the border region, will continue to allow industrialization to ravage the environment on both sides of the border. Second, U.S. environmental standards will suffer a downward harmonization under NAFTA.[8] It is to these two claims that we now turn.

A. The Industrialization of Mexico's Border Towns

The first claim, that NAFTA will have grave environmental consequences, is based on the ecological nightmare created in large part by the *maquiladora* program, Mexico's current free trade agreement.[9] In particular, NAFTA opponents fear that Mexico will host a wave of unprecedented industrialization under NAFTA. If this industrialization follows the example of the *maquiladora* industries, the Mexican environment will suffer a tremendous setback.

The *maquiladora* program grew out of a trade policy initiated in the late 1960s under the Border Industrialization Program,[10] which,

5. Public Citizen v. Office of the U.S. Trade Representative, 782 F. Supp. 139 (D.C. Cir. 1992).

6. Michael York, *President Wins One on NAFTA*, WASH. POST, Sept. 25, 1993, at A1 (assessing the ramifications of an agreement as complicated and broad as NAFTA would have taken years to complete).

7. *Public Citizen*, 782 F. Supp. at 139.

8. Feeley & Knier, *supra* note 3, at 269.

9. *Id.* at 273.

10. Susanna Peters, *Labor Law for the Maquiladora: Choosing Between Workers' Rights and Foreign Investment*, 11 COMP. LAB. L.J. 226, 229 (1990).

in turn, evolved from the National Border Program (PRONAF).[11] Under the program, corporations were allowed to import duty-free capital goods to manufacturing centers just south of the border. Then, corporations could export the completed product and pay a duty only on the value added to the good.[12] Some thirty years later, the *maquiladora* industry employs over 500,000 people and includes roughly 2200 different manufacturing plants.[13] In 1993 alone, the significance of *maquiladora* operations was once again evident as *maquila* exports grew by 17.6%.[14]

This massive industrial expansion has environmentally devastated the border region.[15] In Mexico, as in most developing countries, the government has not had the capital needed to enforce environmental regulations or to provide adequate structural support for the growing industrial centers.[16] Additionally, the United States has failed to reprimand U.S. corporate subsidiaries polluting in Mexico.[17] Compounding this problem is the lack of an adequate hazardous waste disposal system. The official hazardous waste production of the Mexican industry is reported to be 500,000 tons of hazardous waste per month.[18] However, because neither Mexico nor the United States has an adequate tracking system, the actual monthly production is probably quite a bit higher. To service this waste, Mexico has but *one* authorized waste disposal facility.[19]

Consequently, each producer must ship its waste from its home state to Monterrey to be treated. Since such a shipment comes at a tremendous cost, most producers choose to dump their waste clandestinely in the oceans, rivers, and landfills. Even if every producer chose to ship its waste to the Monterrey plant, one disposal plant could not service such a large volume of waste. As a result, only ten percent of hazardous waste produced in Mexico receives any

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11. PRONAF was created in 1961 to "stimulate the economic growth, infrastructure and tourism of [Mexico's] border cities." Joshua A. Cohen, *A Case Study of Internationalization: The Rise of the Maquiladoras*, BUS. MEXICO, Special Ed. 1994, at 52, 52.

12. Peters, *supra* note 10, at 231.

13. Cohen, *supra* note 11, at 52.

14. Augusta Dwyer, *Highs and Lows*, EL FINANCIERO INT'L, Dec. 27, 1993-Jan. 2, 1994, at 6.

15. Leon Lazaroff, *The Polluted Border*, EL FINANCIERO INT'L, Nov. 29-Dec. 5, 1993, at 10.

16. Feeley & Knier, *supra* note 3, at 272-73.

17. Malissa H. McKeith, *The Environment and Free Trade: Meeting Halfway at the Mexican Border*, 10 UCLA PAC. BASIN L.J. 183, 191 (1991). Under Mexican law, U.S. factories must be licensed and must either recycle or export hazardous waste byproducts back to the United States. Recent estimates reveal that only 19% of *all maquiladoras* return their waste to the country of origin.

18. Claudia Villegas, *Hazardous Waste Lacks Dump Sites*, EL FINANCIERO INT'L, Nov. 22-28, 1993, at 8.

19. *Id.* This facility is located in Monterrey.

kind of treatment.[20] Thus, large border towns such as Tijuana, Juarez, Mexicali, Nogales, Matamoros, and Nuevo Laredo are home to polluted air and water. An article in *Business Week* reported: "The factories spew rivers of toxic chemicals each year . . . . Sewage and toxic waste from Tijuana flows into California, blighting beaches. Cows graze on lead-laced dumps in Tijuana, raising the specter of tainted milk."[21] Similarly, a 1992 EPA summary found that in Nuevo Laredo alone, 27 million gallons per day of untreated sewage were being discharged into the Rio Grande river.[22] Clearly, Mexico needs to forge a new relationship between industrialization and the environment. Without proper precautions, industrial development on the scale NAFTA portends could be disastrous.

From a U.S. perspective, the issue of environmental protection is paramount because Mexican pollution does not stop at the border. Consider the developments in just two U.S. border towns. In San Diego, a 2.5 mile stretch of beach just north of the border has been closed since 1980 due to the wastewater flow from Tijuana.[23] Similarly, Cameron County, a community located in the Rio Grande river valley, has reported the highest rate of birth defects in the United States. Between 1986 and 1991, forty-seven cases of anencephaly, a condition where the fetus is born without a brain, have been documented.[24] In fact, the parents of eighteen Cameron County babies recently filed a lawsuit against many of the major *maquiladoras* in the area claiming that the "negligent acts and omissions" of the *maquiladoras* are to blame for their children's afflictions.[25] Thus, the current state of the U.S.-Mexico border environment rings clearly in the ears of U.S. environmental groups. NAFTA promises to significantly increase bilateral trade, and yet, the lesson to be learned is that rapid industrialization, akin to the *maquiladora* program, may have detrimental environmental consequences for those living in the border area.[26] Therefore, NAFTA's environmental provisions and those of the Environmental Side

20. *Id.*
21. Joe Old et al., *How Do You Clean Up a 2,000-Mile Garbage Dump?*, BUS. WK., July 6, 1992, at 31.
22. U.S. ENVTL. PROTECTION AGENCY (EPA), EPA SUMMARY: ENVIRONMENTAL PLAN FOR THE MEXICAN-U.S. BORDER AREA, FIRST STAGE (1992-1994), at 1, 12 (1992) [hereinafter EPA SUMMARY].
23. *Id.* at 12.
24. Karen Hastings, *Birth Defects Blamed on Maquiladoras*, EL FINANCIERO INT'L, June 21-27, 1993, at 16.
25. *Id.*
26. U.S. INT'L TRADE COMM'N, PUB. NO. 2597, POTENTIAL IMPACT ON THE U.S.

Agreement must enforce "sustainable" development. As will be discussed further, I believe that NAFTA will deliver.

B. Lowering Environmental Standards in the United States

The second argument raised by the environmental coalition is that NAFTA will significantly undermine U.S. environmental standards.[27] By its very nature a *free* trade agreement eliminates barriers to the trade of goods between nations. In contrast, environmental standards erect barriers to the trade of goods that pose unacceptably high risks to the environment. Therefore, the environmental coalition fears that honoring the spirit of the agreement will dilute environmental standards and jeopardize the health of the U.S. consumer.

This argument may be supported by examining the practices of member countries under the General Agreement on Tariffs and Trade (GATT).[28] Although GATT allows member countries to adopt and enforce measures designed to protect human, animal, and plant life,[29] this right is qualified by two important conditions. First, countries are expressly prohibited from using technical standards as disguised barriers to trade.[30] Second, such standards cannot be applied in an arbitrary or discriminatory fashion.[31] Therefore, such standards must be based on scientific evidence and must be applied equally to domestic goods and imports.[32]

These conditions are clearly necessary to prevent countries from using their health and environmental standards as leverage against other member countries. On the other hand, these conditions also give members great latitude to *attack* another member's standards. For example, suppose country *X* and country *Y* are both members of GATT. Country *X* then sets a standard requirement that all grapes sold in *X* must be grown pesticide free to protect its citizens from toxins. *X's* domestic growers use predatory insects to fight pests but country *Y's* growers cannot afford to fight the pests naturally. Therefore, *Y's* grapes are banned in *X*. Although country *X's* standard was intended to protect the health of *X*'s citizens, *Y* could assert a claim

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ECONOMY AND SELECTED INDUSTRIES OF THE NORTH AMERICAN FREE-TRADE AGREEMENT at iii, vii (1993).

27. McKeith, *supra* note 17, at 207.

28. General Agreement on Tariffs and Trade, *opened for signature* Oct. 30, 1947, 61 Stat. A3, 55 U.N.T.S. 187 [hereinafter GATT]. GATT is a multilateral trade agreement. It was established in 1948 and governs roughly 80% of world trade. For a more detailed explanation of GATT, see Patti Goldman, *The Legal Effect of Trade Agreements on Domestic Health and Environmental Regulation*, 7 J. ENVTL. L. & LITIG. 11, 12-13 (1992).

29. GATT, *supra* note 28, art. XX, 61 Stat. at A60, 55 U.N.T.S. at 262.

30. *Id.*

31. *Id.*

32. *GATT and Greenery: Environmental Imperialism*, ECONOMIST, Feb. 15-21, 1992, at 78.

against *X* that *X* is violating the rules of GATT because the standard treats *X* growers differently than *Y* growers. In short, the standard "unfairly discriminates" against *Y*'s grapes. Ultimately, *X* may be forced to drop this standard to remain in conformity with GATT.

A similar case occurred most recently in 1991 when the Ninth Circuit held that Mexican fisheries violated the Marine Mammal Protection Act (MMPA)[33] by snaring an excessive amount of unwary dolphins in their tuna nets.[34] Although the importation of Mexican tuna was banned, the environmental victory was short-lived. Mexico successfully petitioned a GATT panel to overturn the decision as violative of GATT's non-discriminatory policy because MMPA established different standards for imported and domestically harvested tuna.[35] Therefore, MMPA could not be enforced against Mexico because it violated GATT rules.[36] The environmental coalition thus argues that environmental standards can be challenged in a similar fashion under NAFTA because NAFTA adopts the language of GATT Article XX.[37] However, unlike the tuna example, challenges raised under NAFTA might include a wide assortment of food products. Allowing these products into U.S. markets would jeopardize the health of the U.S. consumer.

Thus, trade agreements can fly in the face of ecological equilibrium. The examples set by the *maquiladora* industry in Mexico and various members of GATT must be avoided. However, NAFTA is not an ordinary trade agreement destined to follow the examples of the past. Instead, NAFTA and its Environmental Side Agreement are forging perhaps the first successful fusion between economic and environmental concerns. In order to shed more light on this proposition, one must first investigate the key provisions of both NAFTA and, more importantly, the Environmental Side Agreement.

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33. 16 U.S.C. § 1376 (1988). The MMPA bans the importation of tuna from countries that incidentally trap two times more dolphins than U.S. boats. 16 U.S.C. § 1371(a)(2)(B)(ii)(II) (1988).

34. Earth Island Inst. v. Secretary of Commerce, 929 F.2d 1449 (9th Cir. 1991) (finding that Mexico was in violation of the MMPA).

35. General Agreement on Tariffs and Trade: Dispute Settlement Panel Report on United States Restrictions on Imports of Tuna, GATT Doc. 21/R (Sept. 3, 1991), *reprinted in* 30 I.L.M. 1594, 1618 (1991).

36. *Harpooned*, ECONOMIST, June 27-July 3, 1992, at 78. The United States promised legislation to ensure that the ban would be dropped. Since GATT is the supreme trade law of the land, inconsistent federal laws are invalid.

37. North American Free Trade Agreement, Dec. 17, 1992, U.S.-Can.-Mex., art. 712(4), (6), 32 I.L.M. 289, 378 [hereinafter NAFTA, Parts I-III] (describing the limitations to health standards as non-discriminatory and not disguised restrictions to trade).

III. NAFTA & THE ENVIRONMENTAL SIDE AGREEMENT

NAFTA has been labelled the greenest trade agreement ever.[38] Through its preamble, annex, articles on investment and sanitary and phytosanitary measures, and a recently signed side agreement on the environment, NAFTA has taken unprecedented strides towards protecting the environment. As a result, six major environmental groups claiming 7.5 million members firmly back NAFTA.[39] However, in order to understand just how well these strides protect the environment, the important articles of NAFTA and the Environmental Side Agreement must be evaluated.

A. NAFTA

The first step in considering whether NAFTA is truly the green treaty that proponents claim it to be, is to take a closer look at relevant articles of the NAFTA document itself. This analysis will begin with the general language and effect of the NAFTA preamble and will continue through the more specific language and effect of the annex, as well as the articles concerning sanitary and phytosanitary measures.

The first article of concern is the NAFTA preamble. The preamble sets the trade agreement off in an environmental as well as economic direction. Although the agreement is a commercial one, the preamble places concern for the environment on equal footing with the promotion of trade. For example, the parties expressly commit not only to create an expanded market, but also to "[c]ontribute to *harmonious* development," to "[s]trengthen the development and enforcement of environmental laws and regulations," and to pursue economic objectives "in a manner consistent with environmental protection and conservation."[40] These statements are important because they establish an environmental agenda in an economic agreement.

NAFTA also includes environmental language within its articles on investment that should provide two important guarantees.[41] The first guarantee gives parties the right to adopt measures "to ensure that investment activity in its territory is undertaken in a manner

38. Congressman Bill Richardson, Trade & Environmental Policy in Convergence: An Assessment of NAFTA and the Compatibility of International Trade Agreements and Environmental Protection, Presented to the GLOBE General Assembly, Tokyo, Japan, at 8 (Aug. 28, 1993) (copy on file with *San Diego Law Review*) ("Arguably, the NAFTA is the most environmentally sensitive trade agreement ever . . . .").

39. Behr, *supra* note 4, at D10.

40. NAFTA, Parts I-III, *supra* note 37, Preamble, 32 I.L.M. at 297 (emphasis added).

41. North American Free Trade Agreement, Dec. 17, 1992, U.S.-Can.-Mex., art. 1114, 32 I.L.M. 605, 642 [hereinafter NAFTA, Parts IV-Annexes].

sensitive to environmental concerns."[42] Specifically, so long as these measures are not disguised restrictions on trade, a party can adopt standards "to protect human, animal or plant life or health."[43] Under this guarantee, the parties can also enact regulations aimed at "the conservation of living or non-living exhaustible natural resources."[44] The second guarantee provides that parties cannot lower environmental standards to attract investment.[45]

Similarly, language found in Annex I to NAFTA also addresses the environmental question. Take, for example, border air pollution. Under NAFTA, trucks will not be required to switch their cargo at the border as they had to in the past.[46] Instead, shipments will remain on the same truck for the entire journey. As a result, there should be less congestion and thus, less air pollution at the U.S.-Mexico border.

In order to allay the concern that the agreement will lower environmental standards and jeopardize the health of U.S. citizens, NAFTA also devotes an article to sanitary and phytosanitary[47] (SPS) measures. Each party is given the right to establish sanitary and phytosanitary measures to protect "human, animal or plant life."[48] More importantly, the chosen standard can be higher than the international requirements for the same good.[49] Assuming a party has standards that surpass the international requirements or norms, not only are those standards safe from challenge, but the

42. *Id.* art. 1114(1), 32 I.L.M. at 642.
43. *Id.* art. 1106(6)(a)-(b), 32 I.L.M. at 640.
44. *Id.* art. 1106(6)(c), 32 I.L.M. at 640.
45. *Id.* art. 1114(2), 32 I.L.M. at 642. "The Parties recognize that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures." *Id.*
46. For example, under NAFTA, Mexican companies will be able to transport their goods from Mexico directly into the United States. *Id.* Annex I, Schedule of the United States, Transportation, Cross-Border Services, 32 I.L.M. at 747. The Agreement allows a person of Mexico "(a) Three years after the date of signature of this Agreement, cross-border truck services to or from border states (California, Arizona, New Mexico, and Texas)." *Id.*
47. Sanitary and phytosanitary measures are those measures adopted to "protect animal or plant life or health in its territory from risks arising from the introduction, establishment or spread of a pest or disease." NAFTA, Parts I-III, *supra* note 37, art. 724, 32 I.L.M. at 382.
48. *Id.* art. 712(1), 32 I.L.M. at 377. "Each Party may, in accordance with this Section, adopt, maintain or apply any sanitary or phytosanitary measure necessary for the protection of human, animal or plant life or health in its territory . . . ." *Id.*
49. *Id.* art. 713(3), 32 I.L.M. at 378. "Nothing . . . shall prevent a Party from adopting, maintaining or applying, in accordance with the other provisions of this Section, a sanitary or phytosanitary measure that is more stringent than the relevant international standard, guideline or recommendation." *Id.*

other parties may be pressured into upgrading their own standards.[50] Therefore, like the preamble, the annex, and the articles on investment, the sanitary and phytosanitary articles help lay the foundation for the first environmentally sensitive trade agreement. The Environmental Side Agreement transforms this prelude into a functional and efficient regulatory force.

B. The Environmental Side Agreement

Like the NAFTA preamble, the Environmental Side Agreement begins by clearly defining what the agreement aims to achieve. The most notable objectives of the agreement are to:

> (a) foster the protection and improvement of the environment in the territories of the Parties for the well-being of present and future generations;
> (b) promote sustainable development based on cooperation and mutually supportive environmental and economic policies;
> (c) increase cooperation between the Parties to better conserve, protect, and enhance the environment . . . .
> (f) strengthen cooperation on the development and improvement of environmental laws, regulations, procedures, policies and practices;
> (g) enhance compliance with, and enforcement of, environmental laws and regulations . . . .
> (j) promote pollution prevention policies and practices.[51]

Furthermore, the opening provisions also oblige the parties to take certain environmentally sound actions within their own territories.[52] Although the mandates of Article 2 are quite general, Article 2's impact should be enhanced by the more specific requirements of later articles. For example, Article 5 not only requires the parties to effectively enforce their environmental laws, but more importantly, it defines how they are to do so.[53] As language of the treaty, these

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50. *Id.* art. 714(1), 32 I.L.M. at 378. "Without reducing the level of protection of human, animal or plant life or health, the Parties shall . . . pursue equivalence of their respective sanitary and phytosanitary measures." *Id.* The words "without reducing the level of protection" imply that the parties could only unify from low to high and *not* from high to low.

51. North American Agreement on Environmental Cooperation, Sept. 14, 1993, U.S.-Can.-Mex., art. 1, 32 I.L.M. 1480, 1483 [hereinafter Environmental Side Agreement].

52. *Id.* art. 2(1), 32 I.L.M. at 1483. This article requires the parties to
(a) periodically prepare and make publicly available reports on the state of the environment;
(b) develop and review environmental emergency preparedness measures;
(c) promote education in environmental matters . . . ;
(d) further scientific research and technology development . . . ;
(e) assess, as appropriate, environmental impacts; and
(f) promote the use of economic instruments for the efficient achievement of environmental goals.
Id.

53. *Id.* art. 5(1), 32 I.L.M. at 1483-84. This article states that "each Party shall effectively enforce its environmental laws." The "effective" enforcement of an environmental law is defined as:
(a) appointing and training inspectors;

requirements are binding upon the parties and must be pursued in good faith.[54]

Moreover, the Environmental Side Agreement also gives the citizens of each member country the right to become a part of the enforcement effort. For example, each party must allow "interested" persons to make a request to the appropriate governmental authorities to investigate alleged violations of an environmental regulation.[55] Furthermore, each party must also ensure that those who have standing to sue under domestic law will be provided a judicial or quasi-judicial proceeding to settle their claim.[56] The Environmental Side Agreement establishes a method by which, for the first time in a trade accord, a concerned public can play a role in enforcing the terms of the agreement. These opening provisions, therefore, create a basic environmental agenda and also establish concrete commitments each party must respect.

Moving away from the opening provisions and into the substance of the treaty, one sees that the Environmental Side Agreement forges a reliable structure for environmental protection. The two pillars of this structure are the Commission for Environmental Cooperation (CEC) and the dispute resolution mechanism. Without them, the agreement is nothing more than another empty promise.[57]

Environmental scholars and critics alike share the view that environmental action plans and treaties lose much of their value when an effective monitoring and compliance regime has not been established.[58] In fact, some scholars have gone as far as saying that environmental protection is doomed unless independent agencies can

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(b) monitoring compliance and investigating suspected violations . . .
(d) publicly releasing non-compliance information; . . .
(f) promoting environmental audits;
(g) requiring record keeping and reporting; . . .
(i) using licenses, permits or authorizations.

Id. Failure to use any of these techniques for enforcement gives rise to the argument that the party is not "effectively" enforcing its law. As a result, the party in question would be in violation of the agreement.

54. RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 321 (1987).

55. Environmental Side Agreement, *supra* note 51, art. 6(1), 32 I.L.M. at 1484 (mandating that the respective governments "shall give such requests due consideration").

56. *Id.* art. 6(2), 32 I.L.M. at 1484. "Each Party shall ensure that persons with a legally recognized interest under its law in a particular matter have appropriate access to administrative, quasi-judicial or judicial proceedings for the enforcement of the Party's environmental laws and regulations." *Id.*

57. Tom Meersman, *A Green Thumbs Up?*, STAR TRIB., May 31, 1993, at 1D.

58. Peter L. Lallas, *NAFTA and Evolving Approaches to Identify and Address*

become more involved in the regulatory process.[59] Accordingly, the Environmental Side Agreement established the CEC.[60] The Commission is an independent entity made up of a hierarchy of three separate bodies each charged with different functions and duties: the Council, the Secretariat, and the Joint Public Advisory Committee.[61]

The first body of the CEC is the Council. The Council is an independent body made up of representatives from the political echelons of each party.[62] Most importantly, the drafters of the agreement have given the Council a significantly broad environmental agenda and, therefore, the burden of protecting the environment falls largely on the Council. For example, the Council is empowered to oversee the implementation of the Environmental Side Agreement,[63] address controversies between parties,[64] oversee the Secretariat,[65] develop recommendations assessing the environmental impact of projects,[66] and strengthen cooperation on the continuing improvement of environmental laws.[67] Additionally, the Council will have an open channel to work with non-governmental organizations (NGOs)[68] and cooperatively or independently issue recommendations on a wide variety of environmental concerns.[69] Perhaps most importantly, the

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"Indirect" Environmental Impacts of International Trade, 5 GEO. INT'L ENVTL L. REV. 519, 530 (1993).

59. Nicholas A. Robinson, *Introduction: Emerging International Environmental Law*, 17 STAN. J. INT'L L. 229, 234 (1981).

60. Environmental Side Agreement, *supra* note 51, art. 8, 32 I.L.M. at 1485.

61. *Id.* art. 8(2), 32 I.L.M. at 1485.

62. *Id.* art. 9(1), 32 I.L.M. at 1485. This article states that members shall be "cabinet-level or equivalent representatives of the Parties, or their designees." *Id.* This structure should prevent one party from controlling the Council's decisions.

63. *Id.* art. 10(1)(b), 32 I.L.M. at 1485 (also stating that the Council shall "develop recommendations on the further elaboration of this Agreement").

64. *Id.* art. 10(1)(d), 32 I.L.M. at 1485. The Council is to "address questions and differences that may arise between the Parties regarding the interpretation or application of this Agreement." *Id.*

65. *Id.* art. 10(1)(c), 32 I.L.M. at 1485.

66. *Id.* art. 10(7), 32 I.L.M. at 1486-87. The Council must, within three years, make recommendations regarding: "(a) assessing the environmental impact of proposed projects . . . likely to cause significant adverse transboundary effects . . . ; (b) notification, provision of relevant information and consultation between Parties with respect to such projects; and (c) mitigation of the potential adverse effects of such projects." *Id.*

67. *Id.* art. 10(3), 32 I.L.M. at 1486. The parties are to help each other improve their respective environmental laws by: "(a) promoting the exchange of information on criteria and methodologies used in establishing domestic environmental standards; and (b) without reducing levels of environmental protection, establishing a process for developing recommendations on greater compatibility of environmental technical regulations." *Id.*

68. *Id.* art. 9(5)(b), 32 I.L.M. at 1485. *See also* art. 10(6)(a), 32 I.L.M. at 1486.

69. *Id.* art 10(2), 32 I.L.M. at 1485-86. The Council is given the authority to develop recommendations concerning: "(a) comparability of techniques . . . for data gathering and analysis . . . ; (b) pollution prevention techniques and strategies . . . (g) transboundary and border environmental issues . . . (l) environmental matters as they relate to economic development; . . . (o) the exchange of environmental scientists and officials; (p) approaches to environmental compliance and enforcement." *Id.*

Council is charged with monitoring the environmental effects of NAFTA.[70]

The second body of the CEC is the Secretariat. The Secretariat serves two functions. First, the Secretariat acts as the Council's supporting cast by providing technical and operational assistance to the Council, and any working group created by the Council.[71] The idea is to make the CEC a more efficient organization by creating a specialized subgroup to handle all of the time-intensive tasks such as compiling data, developing statistics, and issuing reports. By placing this burden on an independent entity, the Council can allocate the resources saved towards fulfilling its considerable mandate. The end result should be a more efficient monitoring system.

The Secretariat's second function is to monitor the parties and evaluate their compliance with the agreement.[72] The Secretariat has two means to achieve this end. When a party or NGO claims that a particular party is failing to enforce its environmental regulations, the Secretariat is empowered to develop a factual record.[73] This record is to contain any information relevant to the controversy[74] and shall be kept on file with the Council for further consideration.[75] Thus, subject to the Commission's approval, the Secretariat can independently investigate a party's performance. Since treaty benefits can be suspended should this investigation uncover any violations, the maintenance of a factual record is an extremely important function.[76]

The Secretariat can also monitor a party's performance by addressing such in its annual report.[77] The annual report covers actions

70. *Id.* art. 10 (6)(d), 32 I.L.M. at 1486.
71. *Id.* art. 11(5), 32 I.L.M. at 1487.
72. *Id.* arts. 12, 15, 32 I.L.M. at 1487, 1488-89.
73. *Id.* art. 15, 32 I.L.M. at 1488-89.
74. *Id.* art. 15(4), 32 I.L.M. at 1489. This article establishes that the factual record can contain any information "publicly available . . . submitted by interested nongovernmental organizations . . . or . . . developed by the Secretariat." *Id.*
75. *Id.* art. 15(5)-(6), 32 I.L.M. at 1489. A final factual record shall be submitted to the Council. Also, it is important to note that the Council can make this record publicly available. *See id.* art. 15(7), 32 I.L.M. at 1489.
76. An arbitration panel should refer to this factual record in deciding whether there has been a violation. *See infra* notes 93-106 (discussing dispute resolution).
77. Environmental Side Agreement, *supra* note 51, art. 12(1), 32 I.L.M. at 1487. The Secretariat shall prepare an annual report to be reviewed and considered by the Council and made publicly available.

each party has taken to honor the agreement,[78] views and information submitted by NGOs,[79] and any other relevant information the Council wishes to be included.[80] This report must also periodically address the state of the environment in each party's territory.[81] Thus, the Secretariat's role is to serve as an assistant to the Council as well as an independent monitor of party actions and possible treaty violations. Again, the importance of these duties is that they provide the CEC with a mechanism for monitoring compliance with the treaty. Given appropriate funding, the Secretariat should become a highly specialized and efficient monitoring mechanism. As an effective monitor, the Secretariat will take much of the burden of monitoring off of NGOs, giving the NGOs more time to advance political campaigns and apply public pressure to bring non-complying parties into compliance.[82]

The third and final body within the CEC is the Joint Public Advisory Committee. As its name indicates, the primary responsibility of this Committee is to provide additional support to the Council through advisory meetings concerning any matter within the scope of the agreement.[83] By providing additional input, this Committee makes the CEC stronger as a whole.[84] Also, given its independence[85] and obligation to help provide technical information,[86] the Joint Public Advisory Committee contributes to the formation of a legitimate regulatory scheme.[87] Thus, the Joint Public Advisory Committee fits

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78. *Id.* art. 12(2)(c), 32 I.L.M. at 1487. Such actions should include data regarding a party's environmental enforcement efforts.

79. *Id.* art. 12(2)(d), 32 I.L.M. at 1487.

80. *Id.* art. 12(2)(f), 32 I.L.M. at 1487.

81. *Id.* art. 12(3), 32 I.L.M. at 1487.

82. *Developments in the Law — International Environmental Law*, 104 HARV. L. REV. 1484, 1565 (1991) [hereinafter *Developments in the Law*]. The author discusses the important role that the United Nations Economic Commission for Europe (ECE) Secretariat has played in monitoring compliance, which has gone a long way towards the overall success of its environmental agenda. Further, "[b]y reducing NGOs' costs for gathering and analyzing information, international agencies can enable these organizations to spend more resources on publicity campaigns and direct political pressure. Public embarrassment can be more easily brought to bear on states that are not complying with environmental treaties if data on compliance is readily available." *Id.*

83. Environmental Side Agreement, *supra* note 51, art. 16, 32 I.L.M. at 1489. This article allows the Joint Public Advisory Committee to advise the Council and "perform such other functions as the Council may direct." *Id.* art. 16(4), 32 I.L.M. at 1489.

84. *See generally* JAMES L. GIBSON ET AL., ORGANIZATIONS: BEHAVIOR, STRUCTURE, PROCESS 277 (1991) (proposing that a group functions more effectively due to the input of different members of the group).

85. Environmental Side Agreement, *supra* note 51, art. 16(1), 32 I.L.M. at 1489. The Joint Public Advisory Committee is made up of an equal number of members from each party and is therefore not subject to being controlled by a single party.

86. *Id.* art. 16(5), 32 I.L.M. at 1489. The Committee can provide technical information to the Secretariat to help prepare a factual record.

87. Peter S. Smedresman, Note, *The International Joint Commission (United States-Canada) and the International Boundary and Water Commission (United States-Mexico): Potential for Environmental Control Along the Boundaries*, 6 N.Y.U. J. INT'L

squarely into the framework created by the drafters of the Environmental Side Agreement. The Committee buffers the CEC with technical support, spreading the costs evenly across agencies and ultimately contributing to a solid model for regulating compliance.

Having stated its environmental goals and having established committees to pursue those goals, the Environmental Side Agreement takes the unprecedented step of creating a process to handle those parties that refuse to live up to their obligations under the accord. This dispute resolution mechanism is designed to settle the conflict in as mutually acceptable a manner as possible. However, as will become apparent, the procedure also has the teeth necessary to command compliance. Due to the complexity of this mechanism, a hypothetical example should be helpful in clarifying how the Environmental Side Agreement's dispute resolution mechanism works.

Suppose that in 1980, Tox-In, a U.S. company, established a manufacturing base in Tijuana for the production of telephone receivers. In order for the receivers to function properly, chemical lubricants are added during production to each part. As a result of this process, toxic byproducts are released which must be disposed of. Although Mexican law requires Tox-In to ship these byproducts back to the United States, Tox-In has been dumping them into the Tijuana river instead. Furthermore, Tox-In has also violated Mexican federal law by failing to keep a record of its disposal techniques. Tox-In has never been fined nor otherwise penalized and continues to make its byproducts mysteriously disappear.

With the passage of NAFTA and the Environmental Side Agreement, Tox-In's dumping practice might be brought to an end in two ways. First, through article six of the Environmental Side Agreement, an "interested" person could request the Secretariat of Social Development (SEDESOL)[88] officials to investigate Tox-In's dumping practice.[89] If SEDESOL completes its investigation and finds Tox-In

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L. & POL. 499, 512 (1973). The author believes that a regulatory agency is superior to other forms of control such as administrative proceedings. The strength of a regulatory agency specialized in handling the environment is that it can "consider a bewildering variety of factors-technical, political, economic, social and diplomatic-which come into play." *Id.*

88. SEDESOL is the Mexican equivalent of the U.S. Environmental Protection Agency (EPA) and is the successor to the Secretariat of Urban Development and Ecology (SEDUE). Terzan N. Lewis, Comment, *Environmental Law in Mexico*, 21 DENV. J. INT'L L. & POL'Y, 159 n.* (1992).

89. Environmental Side Agreement, *supra* note 51, art. 6(1), 32 I.L.M. at 1484. This article states that "[e]ach Party shall ensure that interested persons may request the Party's competent authorities to investigate alleged violations of its environmental laws

to be in violation of Mexican law, the complaining party must be provided a remedy in accordance with that party's laws.[90] Although Mexican law would not, as yet, allow the citizens of Mexico to sue Tox-In,[91] under Mexican law, Tox-In could be fined, its CEOs arrested, or forced to dispose of its byproducts legally or suffer permanent closure.[92]

Second, if Tox-In's solvents were finding their way into air and water in the United States, the United States could request a consultation with Mexico.[93] This consultation would follow the procedures enumerated for dispute resolution and would ultimately force Mexico to crackdown on Tox-In and similar offenders. Although the United States cannot directly enforce Mexico's environmental regulations by its own hand,[94] the dispute resolution procedures achieve the same end through mutually acceptable means. The only constraint on the United States' ability to make such a request is the requirement that Mexico's nonenforcement be a sustained and recurring course of action and *not* a result of reasonable regulatory discretion or resource allocation to environmental matters of a higher priority than this incident of illegal dumping.[95] In the case of Tox-In, and the many other cases like it, six years of illegal dumping should easily meet this threshold requirement because of the nature and duration of the violation.[96] Thus, under the dispute resolution provisions, the United States and Mexico might convene to find a mutually acceptable solution, and put an end to Tox-In's dumping practices.[97]

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and regulations." *Id.*

90. *Id.* art. 6(3), 32 I.L.M. at 1484. This section recognizes the complaining party's right to "sue another person under that Party's jurisdiction . . . seek sanctions or remedies such as monetary penalties, emergency closures." *Id.* art. 6(3)(a)-(b), 32 I.L.M. 1484.

91. Carl F. Schwenker, Note, *Protecting the Environment and U.S. Competitiveness in the Era of Free Trade: A Proposal*, 71 TEX. L. REV. 1355, 1367 (1993).

92. Lewis, *supra* note 88, at 177. "Non-compliance can result in . . . fines, varying degrees of closure, to an administrative arrest of up to 36 hours." *Id.*

93. Environmental Side Agreement, *supra* note 51, art. 22(1), 32 I.L.M. at 1490. "Any Party may request in writing consultations with any other Party regarding . . . failure by that other Party to effectively enforce its environmental law." *Id.*

94. *Id.* art. 37, 32 I.L.M. at 1494. "Nothing in this Agreement shall be construed to empower a Party's authorities to undertake environmental law enforcement activities in the territory of another Party." *Id.* To allow this would violate party sovereignty.

95. *Id.* art. 45(1), 32 I.L.M. at 1494. A party has not violated its obligation to enforce its environmental laws if nonenforcement is due to: "(a) a *reasonable* exercise of their discretion in respect of investigatory, prosecutorial, regulatory or compliance matters; or (b) bona fide decisions to allocate resources to enforcement in respect of the environmental matters determined to have higher priorities." *Id.* (emphasis added).

96. Allowing six years of illegal dumping would probably not be considered a "reasonable" exercise of discretion. Similarly, a consistent lack of enforcement would probably not qualify as reasonable either.

97. *Id.* art. 22(4), 32 I.L.M. at 1490. So long as Mexico's infraction qualifies as a persistent pattern of nonenforcement, the "Parties shall make every attempt to arrive at

A problem might arise, however, should Mexico, for economic or other reasons, refuse to acquiesce to the U.S. demands to shut down Tox-In's illegal dumping practices. The agreement confronts this problem head on by establishing deadlines for a joint resolution. If the dispute has not been resolved by the target date, intervention by independent agencies of the accord automatically occurs. For example, Article 23 provides for a special session of the Council to be called when the two parties have been unable to reach an agreement within sixty days.[98] The Council's function is to help parties break the gridlock through mediation, expert advice, and appropriate recommendations.[99]

Should further delays prevent the United States and Mexico from reaching a mutually acceptable solution within sixty days of the Council's intervention, an arbitration panel will be called to settle the case once and for all.[100] The arbitration panel's function is to bring the parties to resolve the dispute themselves. However, unlike the Council, the arbitration panel is not left powerless against a stalemate. If the parties cannot resolve their dispute, the panel is empowered to make findings of fact to determine whether the party complained against has persistently failed to enforce its environmental regulations, and if so, the panel will order the violating party to adopt a plan for enforcing their laws.[101] Failure to adopt the panel's action plan, or one the parties themselves agree on,[102] reconvenes the

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a mutually satisfactory resolution of the matter through consultations." *Id.*

98. *Id.* art. 23(1), 32 I.L.M. at 1490.

99. *Id.* art. 23(4), 32 I.L.M. at 1490. The Council, upon intervention, can: "(a) call in such technical advisers or create such working groups or expert groups as it deems necessary, (b) have recourse to . . . mediation or such other dispute resolution procedures, or (c) make recommendations, as may assist the consulting Parties to reach a mutually satisfactory resolution of the dispute." *Id.*

100. *Id.* art. 24(1), 32 I.L.M. at 1490. The arbitration panel will be called after 60 days and with a two-thirds vote of the Council, so long as the nonenforcement of Mexican law involves "workplaces, firms, companies or sectors that produce goods or provide services." *Id.*

101. *Id.* art. 31(2), 32 I.L.M. at 1492. Within 180 days of conception, the panel is to present a report to the parties containing:

> (a) findings of fact;
> (b) its determination as to whether there has been a persistent pattern of failure . . . to effectively enforce its environmental law . . . ; and
> (c) in the event the panel makes an affirmative determination under subparagraph (b), its recommendations . . . for the resolution of the dispute . . . normally shall be that the Party complained against . . . implement an action plan sufficient to remedy the pattern of non-enforcement.

Id.

102. *Id.* art. 33, 32 I.L.M. at 1492. "[T]he disputing Parties may agree on a mutually satisfactory action plan, which normally shall conform with the determinations and

panel.[103] At this point, the panel decides whether the party has implemented the chosen action plan, and if not, the panel will be forced to flex its muscle by assessing fines against the non-complying party and requiring *full* implementation of the proposed plan.[104]

Assuming fines are levied against Mexico and a full implementation of the action plan is required, the Environmental Side Agreement does not rely on Mexico's good faith in making sure that the plan is finally put into action. For example, should the United States find itself still bothered by Tox-In's wastewater several months later, the United States can bring the panel back yet again to investigate whether Mexico did indeed put the proposed plan into action as agreed.[105] A finding of anything less than *full* compliance with the action plan and complete payment of the fines provides the complaining party its biggest stick: suspension of NAFTA benefits.[106] Because a party can hardly afford to lose $20 million per year for any reason, the threat of suspension and the actual suspension in fact of NAFTA benefits should bring a quick and final end to the matter.

IV. ANALYSIS

NAFTA articles regarding the environment and the Environmental Side Agreement should allow NAFTA to respond strongly to the criticisms that the trade agreement will result in reckless development and lower environmental protection. As will be discussed further, these articles each contribute toward making NAFTA a model for future trade negotiators to use in reaching an equilibrium between economic development and environmental protection. Perhaps most important is the fact that NAFTA language is binding on the parties. As part of the treaty this language becomes the highest law of the land, overriding any conflicting domestic legislation.[107] Thus,

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recommendations of the panel." *Id.*

103. *Id.* art. 34(1)(b), 32 I.L.M. at 1492. If the parties have not agreed on an action plan or have an action plan but cannot agree on whether the chosen action plan is being implemented, "any disputing Party may request that the panel be reconvened." *Id.*

104. *Id.* art. 34(6), 32 I.L.M. at 1493. Reconvening the panel results in the party complained against being fined and ordered to implement its action plan or an action plan created by the panel. Furthermore, "any such provision shall be final." *Id.*

105. *Id.* art. 35, 32 I.L.M. at 1493. One-hundred eighty days after the panel imposes fines and orders the adoption of the action plan, "[a] complaining Party may . . . request in writing that a panel be reconvened to determine whether the Party complained against is fully implementing the action plan." *Id.*

106. *Id.* art. 36, 32 I.L.M. at 1493. NAFTA benefits can be suspended by as much as $20 million per year or .007% of the total trade in goods between the parties the past year until the offending party comes into compliance. *Id.* Annex 34(1), 32 I.L.M. at 1493.

107. RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 111(1) (1987). This section states that "international agreements of the United States are law of the United States and supreme over the law of the several States." *Id.*

by making environmental protection a goal of the treaty, each member is held to pursuing that goal[108] and can suffer the ultimate penalty of suspension of benefits for noncompliance.[109] Bearing this important point in mind, a more accurate assessment of NAFTA and the Environmental Side Agreement can now be made.

A. NAFTA

As the starting point for the agreement, the preamble shall also be the first NAFTA article to be analyzed. The most positive aspect of the preamble is that environmental protection is firmly established as a goal of the agreement. Indeed, equal weight is given to environmental protection and promotion of trade. Although NAFTA is technically a "trade" agreement, the environment will *not* be taking a back seat to economic concerns.

On the other hand, the preamble is weak because it does not seem to bind the parties to anything quantifiable. It will be difficult, if not impossible, to determine when a party is acting in a manner inconsistent with environmental conservation and protection unless the party's actions are grossly out of line.[110] This weakness is not fatal, however, because the agreement does go into greater detail in each of the other pertinent sections. Thus, the preamble does a good job of making the environment a priority and leaving it up to the other articles to fill in the details.

The NAFTA provisions for the environment answer some of the questions posed by critics and those questions left unanswered by the preamble. The declarations of these articles contain several key commitments that should have a significant impact on strengthening environmental protection and easing environmentalists' fears. First, one of the most notable improvements contributed by these articles is that they go a long way toward eliminating the possibility that

108. *Id.* § 321. "Every international agreement in force is binding upon the parties to it and must be performed by them in good faith." *Id.* Because NAFTA has been approved by the appropriate legislative bodies of all three countries, the agreement is in force and binding.

109. *Id.* § 335(2). "A material breach of a multilateral agreement by one of the parties entitles (a) the other parties by unanimous agreement to suspend the operation of the agreement in whole or in part or to terminate it . . . ." *Id.* Under NAFTA, the same principles govern, but efforts to reconcile the conflict must first be made by the parties.

110. *Developments in the Law*, *supra* note 82, at 1555. The author states that a less effective environmental agreement is one that "creates few concrete obligations and merely pronounces a vague commitment to address broad environmental concerns." *Id.* The language of the preamble, when viewed in isolation of the other sections, really doesn't commit the parties to much.

NAFTA will reduce the quality of goods entering the United States. By reaffirming the U.S. government's right to reject goods that do not meet its standards, all goods entering the United States must meet U.S. health standards to gain access to U.S. markets.

In addition, NAFTA will not lead to the weakening of health standards because these articles permit parties to *raise* the level of their own standards. This allowance runs directly against the most recent trends in international trade in which countries are encouraged to lower their standards to a less restrictive international level so as to provide for maximum free trade.[111] By allowing the parties to raise their standards above international levels, a traditional tool used to defeat strict health standards is lost.[112] Although NAFTA is founded on GATT principles, challenges to strict environmental standards will meet a different fate under NAFTA.[113]

Finally, the environmental provisions take a big step in the right direction toward fostering strict environmental standards by not allowing parties to lower their standards as a means of attracting foreign investment.[114] Thus, the concerns that U.S. corporations will flee to Mexico to take advantage of relaxed environmental enforcement are overstated. Although Mexico may choose not to enforce its environmental laws in order to invite greater investment in its country, such a lowering of environmental standards is sanctionable under NAFTA. Therefore, if U.S. corporations relocate to Mexico to take advantage of continued relaxed enforcement of federal environmental regulations, Mexico will be in violation of the treaty and subject to sanctions.

The NAFTA sanitary and phytosanitary article should also be quite effective in preventing the erosion of health standards. Mexico, the United States, and Canada are afforded the unprecedented opportunity to establish health-related import requirements that can be stricter than international norms for the same product. This is a significant departure from the policy of Article XX of GATT, where

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111. Goldman, *supra* note 28, at 13. The author states that "[e]arly GATT negotiations and trade disputes focused on reducing tariff rates . . . . In the past two decades, however, GATT negotiations and disputes have begun to focus on . . . many domestic programs and laws that protect health or the environment." *Id.* (footnote omitted).

112. *Id.* at 13-20. The author explains that most countries whose products are banned from sale in a particular country due to the product's failure to meet a prescribed health standard often successfully defeat the standard as unjustifiably excessive under GATT rules, which prevent the "unjustifiable" discrimination between goods. NAFTA justifies high standards, thus defeating this argument.

113. NAFTA, Parts I-III, *supra* note 37, arts. 101-103(2), 32 I.L.M. at 287. Articles 101 and 102 specifically cite GATT and provide that the parties maintain their rights under GATT. However, Article 103(2) states that "[i]n the event of any inconsistency between this Agreement and such other agreements, this Agreement shall prevail." *Id.* art. 103(2), 32 I.L.M. at 297. Thus, the more liberal NAFTA rules will govern disputes under the agreement.

114. NAFTA, Part IV-Annexes, *supra* note 41, art. 1114(2), 32 I.L.M. at 642.

the right to impose environmental standards is allowed but is implicitly limited to international levels.[115] However, NAFTA is consistent with GATT in that a domestic standard must not discriminate among goods or act as a disguised restraint on trade.[116] Once again, a highly plausible result of this interplay between NAFTA and GATT is that challenges to environmental standards under NAFTA would be less successful. Since each NAFTA party has the right to adopt standards that surpass international requirements, a high standard is no longer immediately suspected to be a discriminatory one.[117] Moreover, it would be difficult to argue that such a standard would constitute a disguised restriction on trade when the NAFTA treaty explicitly grants the right to enact such a standard. Thus, a country's uniquely high environmental standards would be given greater resiliency under NAFTA.

Furthermore, parties are charged with the objective of making their SPS measures equivalent to those of the other parties.[118] When read together with the previous articles on the environment, which generally encourage an upward harmonization, this equivalency requirement should cause SPS levels to unify at the highest level of enforcement, thus avoiding a negative, downward harmonization. Therefore, the entire thrust of the SPS and environmental articles seems to be aimed at eliminating the traditional trade agreement vice. Under NAFTA, environmental standards will not be diluted.

B. The Environmental Side Agreement

The next issue to consider in weighing the substance of the environmental critique of NAFTA is whether the Environmental Side Agreement can serve adequately as the policing agent it is meant to

115. GATT, *supra* note 28, art. XX, 61 Stat. at A60, 55 U.N.T.S. at 262. Article XX states only that a party can adopt and enforce measures that are "necessary to protect human, animal or plant life or health." *Id.* NAFTA goes beyond this by allowing a party to set such standards at uniquely high levels if the party so desires. *See supra* notes 47-50 and accompanying text.

116. NAFTA, Parts I-III, *supra* note 37, art. 712(4), 32 I.L.M. at 378. "Each Party shall ensure that a sanitary or phytosanitary measure that it adopts . . . does not arbitrarily or unjustifiably discriminate between its goods and like goods of another Party." *Id.* Compare this with GATT Article XX which requires that "such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination." GATT, *supra* note 28, art. XX, 61 Stat. at A60, 55 U.N.T.S. at 262.

117. NAFTA, Parts I-III, *supra* note 37, art. 713(3), 32 I.L.M. at 378.

118. *Id.* art. 714(1), 32 I.L.M. at 378. This article calls for standards to be uniform between the parties but does not allow "reducing the level of protection of human, animal or plant life or health." *Id.*

be. Critics have argued that the Environmental Side Agreement lacks an aggressive, well-supported enforcement mechanism and therefore holds little promise.[119] However, by examining the articles concerning the objectives, obligations, organizations, and enforcement of the agreement, the truth of the matter should become more evident. The addition of the Environmental Side Agreement to an already environmentally sensitive NAFTA will create the most environmentally conscious trade agreement ever negotiated, and should begin a dramatic change in how the world views Mexico and trade agreements in general.[120]

The first aspect of the Environmental Side Agreement that should be examined is the nature of the commitments and obligations to which the parties are bound. As previously mentioned, the Environmental Side Agreement establishes an agenda which is intended to guide future actions by U.S., Mexican, and Canadian traders, investors, or entrepreneurs.[121]

Although critics might argue that the language of Article 1 is too vague to offer any real promise,[122] this article, just like the NAFTA preamble, must be looked at in the context of the entire agreement. This article was intended to be vague because, as the first article in the agreement, its function is simply to establish the general principles and themes of the agreement. Certainly, if the agreement had stopped here, it would be worth very little.[123]

However, the agreement contains subsequent articles that should satisfy this scrutiny. Article 1 must be read together with the express obligations of the parties set forth in Part 2 of the agreement, which establishes an even more aggressive environmental framework. Specifically, each party is obligated to honor the commitments of three important articles concerning environmental protection. First, in regard to its own territory, each party *must*: periodically issue public reports on the state of the environment, develop and review emergency preparedness measures, promote environmental education and scientific research, and assess the environmental impacts of investment projects.[124] The parties are also required to "effectively" enforce their environmental laws by appointing inspectors, monitoring

119. Jeff Faux, *The Failed Case for NAFTA*, BRIEFING PAPER (Economics Policy Inst., Washington, D.C.), June 1993, at 13-14.

120. OFFICE OF THE U.S. TRADE REPRESENTATIVE, NAFTA SUPPLEMENTAL AGREEMENT ON ENVIRONMENTAL COOPERATION 1 (1993).

121. Environmental Side Agreement, *supra* note 51, art. 1, 32 I.L.M. at 1483. This article establishes the objectives of the agreement.

122. *Developments in the Law*, *supra* note 82, at 1555-56 (arguing that vague commitments to "reduce pollution" or "preserve nature" prevent an agreement from "making a substantial contribution to environmental protection").

123. *Id.*

124. Environmental Side Agreement, *supra* note 51, art. 2(1)(a)-(e), 32 I.L.M. at 1483.

compliance, encouraging audits, and requiring record keeping and reporting.[125] Thus, it is important to note that, unlike well-meaning yet ineffective environmental agreements of the past, the Environmental Side Agreement avoids the notorious pitfall of speaking in such general terms that the terms themselves are meaningless.[126]

In the case of Mexico, these articles strike at the heart of the loudest environmental complaint, that Mexico doesn't enforce its environmental laws. By requiring Mexican authorities to "monitor compliance" and "appoint inspectors," the Environmental Side Agreement commands Mexico to enforce its own laws.[127] Mexico will now be in violation of an international treaty if nonenforcement continues. This is important because, as a party to the treaty, the United States would be given the right to suspend benefits to Mexico in response to such a violation.[128] In all likelihood, Mexico would rather spend more money on enforcement than suffer a suspension of the benefits it so deeply covets.

Finally, the opening provisions of the Environmental Side Agreement reinforce NAFTA's stance against reducing environmental standards. The Environmental Side Agreement takes the important step of recognizing the right of each party to establish their own desired levels of environmental protection.[129] This step is significant because it should prevent challenges to strict environmental standards from having any success in lowering those standards. In the past tough environmental standards were challenged under GATT Article XX. The challenge under GATT has been that a certain high standard is a disguised restriction on trade,[130] and, therefore, must be removed. However, because the Environmental Side Agreement restates NAFTA's right to impose standards of a party's

125. *Id.* art. 5, 32 I.L.M. at 1483-84. This article states that "each Party *shall* effectively enforce its environmental laws" and also lists various activities governments can undertake towards that end. *Id.* (emphasis added).

126. Compare the language of the Environmental Side Agreement with that of the Agreement on Cooperation in the Field of Environmental Protection, May 23, 1972, U.S.-U.S.S.R., arts. 1-3, 23 U.S.T. 845, 847-48. Phrases in the latter agreement include, "[a]ttaching great importance to the problems of environmental protection." *Id.* at 846.

127. Assuming Mexico continued to avoid enforcing its environmental regulations, the language of Articles 2 and 5 of the agreement arguably place Mexico in violation of the treaty and subject to sanctions. Thus, Mexico now has a greater incentive to comply. *See supra* notes 52-54 and accompanying text.

128. *See supra* note 109 and accompanying text.

129. Environmental Side Agreement, *supra* note 51, art. 3, 32 I.L.M. at 1483. This article addresses the levels of protection allowable under the agreement.

130. *GATT and Greenery: Environmental Imperialism*, *supra* note 32, at 78.

choice, even if those standards surpass international norms,[131] excessively high standards should be presumptively legitimate. This is not to say that the standard can never be a disguised barrier to trade. Rather, the point is that by reiterating the right of NAFTA parties to establish uniquely high standards, the task of proving that a standard is a disguised restraint on trade becomes much more difficult. Thus, with the Environmental Side Agreement reinforcing NAFTA's language on the issue, challenges to environmental standards will be less successful.

Unlike the positive strides made by the opening provisions of the Environmental Side Agreement, Article 6 of the agreement does little to advance environmental protection. Article 6 claims to provide private access to remedies for violations of environmental laws.[132] This provision does not change anything because domestic law still controls.[133] Thus, citizens in the United States already have such access and Mexican law does not allow private citizens to sue for violations of Mexico's environmental law.[134] Therefore, this article, though seemingly helpful, offers very little promise.

The next point of inquiry is the CEC. Comprised of a Council, Secretariat, and Joint Public Advisory Committee, the CEC gives the agreement some important strengths, but also has some noticeable weaknesses.

To begin with, the Council has been given powers which are not only significant in scope, but are also important because they correspond to the types of powers an international agency needs in order to make an effective stand for environmental protection. For example, the United Nations Conference on the Human Environment found that in order to successfully protect the environment, a green treaty had to establish a central body responsible for coordinating environmental work and managing environmental resources.[135] The Council seems to strongly reflect this principle by taking charge of coordinating environmental regulation, promoting cooperation, and

131. NAFTA, Parts I-III, *supra* note 37, art. 713(3), 32 I.L.M. at 378.

132. Environmental Side Agreement, *supra* note 51, art. 6(2), 32 I.L.M. at 1484. "Each Party shall ensure that persons with a legally recognized interest under its law in a particular matter have appropriate access to administrative, quasi-judicial or judicial proceedings for the enforcement of the Party's environmental laws and regulations." *Id.*

133. Only those with a *legally recognized* interest under that Party's law are given standing. *Id.*

134. Schwenker, *supra* note 91, at 1367. "Mexico's environmental laws do not allow for citizen suits for environmental protection, one of the most important and effective provisions of U.S. environmental laws." *Id.*

135. United Nations Conference on the Human Environment, June 16, 1972, 11 I.L.M. 1416, 1423. The conference recommends entrusting "the over-all responsibility . . . to any central body that may be given the co-ordinating authority in the field of the environment." See also Principle 17 which directs this central authority to "managing or controlling the environmental resources of States with the view to enhancing environmental quality." *Id.* at 1419.

generally handling the implementation of the agreement.[136]

Furthermore, in order to be successful, a regulatory agency must also promote environmental training and education, establish strong communication networks, and facilitate a transfer of technology.[137] The NAFTA Council has each of these revered traits. To promote training, the Council can make recommendations for "human resource training and development in the environmental field."[138] Similarly, to establish strong communication networks, the Council promotes public access to information on the state of the environment,[139] and provides for NGO input[140] in order to give the Council a broader range of support and legitimacy.[141] Finally, to facilitate technology transfers, the Council can recommend the exchange of environmental scientists[142] and can conduct studies to compare techniques for data gathering and analysis.[143] Once again, the Council has been given powers that some scholars argue are vital to the success of a regulatory scheme.[144] Thus, as the first body of the CEC, the Council will shoulder the burden of managing the environmental concerns and orchestrating the application of the agreement's provisions from theory to practice. Although time will truly tell how successful the Council will be, the CEC's first step is a respectable one.

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136. Environmental Side Agreement, *supra* note 51, art. 10, 32 I.L.M. at 1485. *See supra* notes 63-70 and accompanying text.

137. Paul R. Muldoon, *The International Law of Ecodevelopment: Emerging Norms for Development Assistance Agencies*, 22 TEX. INT'L L.J. 1, 38-39 (1986). Mentioning these features as the most important aspects of a multilateral donor's regulatory agency, "successful international ecodevelopment requires major *coordinated programs* to address problems such as . . . deforestation, soil loss . . . . A multitude of sources support this ecodevelopment norm." *Id.* (emphasis added).

138. Environmental Side Agreement, *supra* note 51, art. 10(2)(n), 32 I.L.M. at 1486.

139. *Id.* art. 10(5)(a), 32 I.L.M. at 1486.

140. *Id.* arts. 9(5)(b), 10(6)(a), 32 I.L.M. at 1485-86.

141. *Developments in the Law*, *supra* note 82, at 1575. By tapping into NGOs, the agreement helps foster environmental education and ethics at the local level. This is important in countries such as Mexico where the local populations contribute to environmental degradation because they lack the information necessary to make an informed decision.

142. Environmental Side Agreement, *supra* note 51, art. 10(2)(o), 32 I.L.M. at 1486.

143. *Id.* art. 10(2)(a), 32 I.L.M. at 1485.

144. *Developments in the Law*, *supra* note 82, at 1565. By placing much of the monitoring burden on an independent NAFTA agency, parties can "shift resources to other priorities and at the same time allow NGOs and environmental groups to monitor treaty compliance." Also, "[b]y reducing NGOs' costs for gathering and analyzing information, international agencies can enable these organizations to spend more resources on publicity campaigns and direct political pressure," thereby increasing the likelihood that the agreement will be effective in protecting the environment. *Id.*

The final two agencies, the Secretariat and the Joint Public Advisory Committee, are primarily charged with providing support to the Council, and therein lies their importance. With the tremendous increase in trade and investment activities that will undoubtedly proceed from NAFTA, assigning the task of tracking the environmental ramifications of such activity to one body alone would be ludicrous. By delegating duties among three bodies, the CEC should be more adequately prepared to handle its regulatory task.

On the other hand, the CEC does have two flaws worth noting. First, the CEC may be hindered by the apparent lack of a binding agenda. The agreement gives most of the regulatory power to the Council and yet, many of the important duties appear to be optional. For example, Article 10(2) provides a long list of what the Council "may consider, and develop recommendations regarding."[145] A stronger agency could have been created had the Council been *required* to pursue one or more of the activities described.

Second, the CEC will inevitably create a various array of problems due to its size and complexity. The CEC could become a bureaucratic nightmare. Despite the strength in delegation, trying to coordinate the activities of three distinct government bodies, each with representatives from different countries, speaking different languages, and following different cultural guidelines could prove to be more difficult than protecting the environment itself. Indeed, the CEC might never get to its environmental agenda. Thus, although the CEC is undoubtedly needed to bring NAFTA's environmental pledges into action, the CEC's effectiveness will be hampered by weaknesses common to bureaucratic bodies.

Standing beside the question of whether the Environmental Side Agreement can effectively regulate party activities is the issue of whether the Environmental Side Agreement can adequately enforce its agenda through its dispute resolution mechanism. Although critics claim this mechanism has no real power to enforce the agreement, the dispute resolution article has several notable assets.

First, by linking treaty benefits with environmental compliance, the Environmental Side Agreement creates a powerful tool to manhandle parties into compliance. No other trade agreement in history has ever levied sanctions against parties for not enforcing their environmental laws.[146]

Furthermore, by establishing an independent dispute resolution

145. Environmental Side Agreement, *supra* note 51, art. 10(2), 32 I.L.M. at 1485-86. *See supra* note 69 and accompanying text.

146. *The Great NAFTA Debate*, WASH. POST, Oct. 3, 1993, at C3.

process, NAFTA avoids the pitfall of having to refer to an international court for a remedy. Since such international courts have consensual jurisdiction only, the NAFTA Side Agreement eliminates the polluting party's ability to sidestep sanctions by not consenting to adjudication.[147] Therefore, by establishing its own dispute resolution mechanism with automatic jurisdiction over environmental disputes, the agreement goes a long way toward removing the skepticism that the treaty's environmental language will be ignored.

On the other hand, the dispute resolution procedures can only be activated by a "persistent pattern of failure by the Party complained against to effectively enforce its environmental law."[148] Arguably, a high threshold is created because a controversy does not arise until a pattern of nonenforcement exists. Thus, a party that allows occasional, sporadic violations of its environmental laws could probably escape sanction. However, the type of action that *is* addressed is that which has proven to be a problem in the past. Specifically, the pre-NAFTA complaint was that Mexico *consistently* failed to enforce its environmental regulations. Therefore, the dispute resolution article focuses on eliminating this behavior. Although a pattern of nonenforcement is required, this is the type of behavior that NAFTA should seek to prevent. Cases of sporadic and inconsistent enforcement pale in comparison to the problem of consistent and regular nonenforcement. Thus, this article should not be disparaged for attacking the very problem environmentalists complained about in the past. By granting the power to hear disputes and levy sanctions, the dispute resolution articles should make a powerful contribution to the new regulatory climate created by NAFTA.

C. *Independent Environmental Trends in Mexico*

Although the analysis to this point has focused on the ability of NAFTA and the Environmental Side Agreement to achieve environmentally responsible development, we now direct our attention to Mexico's ever-increasing environmental awareness and responsibility.

147. Robinson, *supra* note 59, at 252. Robinson states that "[a]ny new institutional arrangement would offer a better opportunity for avoiding major environmental hazards than would resort to traditional adjudications." *Id.* Additionally, referring a dispute to the International Court of Justice is a losing proposition because the court has no power "unless the two states both accept the Court's jurisdiction." *Id.*

148. Environmental Side Agreement, *supra* note 51, art. 28(3), 32 I.L.M. at 1491. A panel can be convened only for this purpose, "[u]nless the disputing parties otherwise agree." *Id.* " '[P]ersistent pattern' means a sustained or recurring course of action or inaction." *Id.* art. 45(1), 32 I.L.M. at 1495.

Few have considered the role Mexico has played, independent of NAFTA, to ensure that modernization and industrialization come without ecological desecration. With an eye keenly focused on becoming a first-world nation, Mexico has done more in the past few years to prove that it is ready to become environmentally responsible than either the United States or Canada. Perhaps unfairly, the Mexican achievements have gone without notice or have been noticed but disregarded as political ploys to influence the U.S. congressional vote. This claim would seem to make sense if Mexico had simply made a few last-minute plant closures or timely speeches. However, such is not the case.[149] Mexico has made a 180-degree turn in both attitude and action, raising the argument that regardless of the NAFTA language, industries will not exploit Mexico's environment because Mexico itself will not allow them to do so. This proposition should become clearer by reviewing some of the steps Mexico has taken and is taking to become its own environmental watchdog.

One of the most promising changes made in the past decade has been the adoption of a federal environmental law. The General Law of Ecological Equilibrium and Environmental Protection (GLEEEP) was put into action in 1988 and is patterned after federal environmental laws of the United States.[150] GLEEEP establishes technical standards to protect the air, water, soil, fauna, and plant life of Mexico. All manufacturers must meet these standards in order to procure an operating license.[151] Furthermore, hazardous waste producers must comply with tracking and testing standards and report on the use and disposal of these materials.[152] Those companies generating hazardous waste from products imported for industrial use under the *maquiladora* program must return the waste to the country of origin.[153] Thus, GLEEEP gives Mexico a legal structure for the protection of the environment of first-world status.

Moreover, although enforcement has been slow in coming, recent developments provide some promise that GLEEEP might finally become a legitimate legal regime. For example, despite its pressing

149. EPA SUMMARY, *supra* note 22, at 12. Mexico's environmental commitment dates back to 1944 with the formation of the International Boundary and Water Commission to handle water sanitation along the border. Also, in 1983 Mexico signed the Integrated Environmental Plan for the U.S.-Mexico Border Area. The plan focuses on making comprehensive improvements to the border regions.

150. Feeley & Knier, *supra* note 3, at 281-82.

151. McKeith, *supra* note 17, at 189-90.

152. *Id.* at 189-91. Hazardous waste operators must, among other things, obtain a license from SEDUE, file an environmental impact statement, and file biannual reports on any waste that is stored. SEDUE is now replaced by SEDESOL and is Mexico's version of the EPA. *See supra* note 88.

153. McKeith, *supra* note 17, at 191. "Mexican law prohibits the importation of hazardous waste unless it can be recycled or reused." *Id.*

lack of funding, the Mexican government closed 82 industrial facilities permanently, and some 980 temporarily between 1989 and 1991.[154] One of the facilities permanently closed was the PEMEX petroleum plant in Mexico City which had employed 5000 people.[155] Furthermore, some 2000 plant owners have signed pledges to install pollution-control equipment by certain deadlines.[156]

Complementing this recent regulatory activity, more money is being contributed to the cleanup effort. The Mexican commitment alone has dramatically increased. Since 1989, Mexico's federal environmental budget has grown more than eleven times its original size to a total fund of more than $78 million.[157] This represents an 1800% increase in available funds.[158] Additionally, the World Bank has agreed to release $1.8 billion to the effort,[159] while NAFTA itself will provide up to $10 billion through joint U.S. and Mexico contributions.[160] The Integrated Border Plan will provide additional funding for the border cleanup. Under this plan, Mexico has committed over $242 million to revamp the border infrastructure.[161] Mexico has also committed $239 million for a wastewater facility to be built in Tijuana.[162] Thus, with this increased funding, Mexico should finally be able to update its infrastructure by building new treatment facilities and disposal systems. Further, with this capital influx Mexico should also be able to train more inspectors, conduct more inspections, and generally enforce GLEEEP much more effectively.

Additionally, with the passage of NAFTA, Mexico has received greater scrutiny by both the international media and the international investor. In a sense, the eyes of the world are now focused on

154. Response of the Administration to Issues Raised in Connection with the Negotiation of NAFTA, *available in* WESTLAW, 1991 WL 434200 (N.A.F.T.A.), at *2 (May 1, 1991) [hereinafter Response of the Administration].

155. Emilia Askari, *Aiming to be Green Mexico's Push to Clean Up Has Seen Some Progress But It's a Costly Endeavor*, DETROIT FREE PRESS, Apr. 29, 1993, at 5A; Response of the Administration, *supra* note 154, at *3.

156. Askari, *supra* note 155, at 5A.

157. *Id.* This increase means that Mexico now spends 86 cents per capita on the environment.

158. *Id.*

159. Augusta Dwyer, *Border Clean-Up Loan Approved*, EL FINANCIERO INT'L, Oct. 4-10, 1993, at 1.

160. Rita Beamish, *EPA Devising Border Action Plan for Waste Cleanups, Under NAFTA the U.S. is Allotting the Environment $230 Million This Year*, PHILA. INQUIRER, Sept. 19, 1993, at A3.

161. Response to the Administration, *supra* note 154, at *3.

162. Gary Lee, *Tijuana River Cleanup on Track, Hill Is Told*, WASH. POST, Apr. 14, 1994, at A3.

Mexico.[163] Consequently, a new environmental philosophy is emerging south of the border. This environmental ideology has become so pervasive that multinational corporations, the traditional foes of the environment, are getting into the act. For example, Sabritas-Gamesa, a Mexican chip and biscuit producer, has replaced their Mexico City delivery vans with 455 electric vans in an effort to reduce the city's air pollution.[164] The manufacturer has plans to expand the fleet's size as well as to implement the vans in other highly polluted cities such as Monterrey and Guadalajara. Other unique efforts are also being made by some local businessmen in Monterrey who gather 3000 tons of waste daily for use at their electricity plants that run on garbage.[165]

Following in their footsteps is General Motors (GM) who is spending $8 million of its own money on a waste-water treatment plant in Matamoros where, presently, all of the city's waste is dumped into a canal that carries it to the Gulf of Mexico.[166] GM will also be spending $20 million on waste-water treatment plants for thirty-one of its *maquiladora* plants.[167] The Mexican pharmaceutical firm of Benavides has agreed to spend $3 million on a similar plant at its Monterrey location.[168]

Further signs of a new environmental climate are evidenced by the official and unofficial ecological education of the Mexican populace. For example, public interest organizations such as Greenpeace and the Sierra Club now have numerous counterparts in Mexico.[169] Furthermore, the federal government has initiated several programs in both public and private schools to teach children the value of recycling.[170] Perhaps most notable, the University of Baja California and the Colegio De La Fronteria have established masters programs in environmental studies.[171] Thus, one must take note of the tremendous reorientation occurring in Mexico. With the influx of capital,

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163. This is evidenced by the tremendous amount of national and international coverage given to the assassination of Luis Donaldo Colosio and the rebellion in Chiapas. In the past, such events often received minimal attention.

164. Chris Williams, *Zero Pollution Vans Deliver Munchies*, EL FINANCIERO INT'L, Dec. 6-12, 1993, at 2.

165. Alva Senzek, *There's No Free Lunch*, EL FINANCIERO INT'L, Dec. 13-19, 1993, at 5.

166. Lazaroff, *supra* note 15, at 10.

167. Old et al., *supra* note 21, at 31.

168. Leon Lazaroff, *Nothing But Gray Skies*, EL FINANCIERO INT'L, Nov. 8-14, 1993, at 10.

169. Askari, *supra* note 155. "[M]ore than two hundred environmental groups have sprung up in Mexico within the last decade. Only a handful existed before." *Id.*

170. Interview with Elsa Saxod, Executive Director, United States-Mexico Border Progress Foundation, in San Diego, California (Mar. 19, 1994). These programs typically provide government donations in exchange for cans collected by students for recycling.

171. *Id.*

and a new attitude, Mexico should play a significant role in protecting its own environment independent of NAFTA and the Environmental Side Agreement.

V. CONCLUSION

The political battle against the North American Free Trade Agreement, though ultimately lost, raised important questions concerning the ecological impact of so large a trade accord. Critics claim that NAFTA is an environmental nightmare. NAFTA, it is said, will exacerbate the environmental crisis created by the *maquiladora* program, Mexico's latest experience with foreign industry. Furthermore, NAFTA will dilute strict U.S. health standards in order to fulfill its promise of *free* trade. Both claims are based on precedent set under different treaties and different times.

NAFTA, however, cannot be analyzed with one eye focused on past agreements. By concentrating solely on the provisions of NAFTA and its Environmental Side Agreement, the environmental criticisms of the agreement seem to lose much of their conviction. Furthermore, if one is to consider external factors in weighing the success or failure of NAFTA's environmental sensitivity, the focus should not be on what happened in Mexico in the past, but rather, on what is occurring in Mexico today. Clearly, a new environmental philosophy is emerging south of the border. Though still in its early stages, this philosophy offers strong evidence that the protection of the environment will not be left to NAFTA itself. Finally, Mexico itself seems to be both willing and able to enter the arena. Thus, the environmental criticism is misplaced. With both an environmentally sensitive treaty and trading partner, NAFTA may become the first free trade agreement to achieve economic development in an ecologically responsible manner.

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